

In the United States Bankruptcy Court
for the Northern District of Georgia
Atlanta Division

2/6/07

In re)	Case No. 05-41487-MGD
)	
James Wiley Earwood)	Chapter 7
and Linda Gayle Earwood,)	
)	
Debtors.)	Judge Diehl
)	
Tracey L. Montz,)	
)	
Plaintiff,)	
)	
v.)	Adv. Case No. 06-04108-MGD
)	
Chase Card Services, Inc.,)	
)	
Defendant.)	

**ORDER DENYING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT**

On June 7, 2006, Trustee Tracy Montz ("Trustee") filed a Complaint against Defendant "Chase Card Services, Inc." seeking recovery of money or property on the alternative theories of preferential transfer and avoidance (11 U.S.C. §§ 547 and 550) and enforcement of a settlement agreement. Trustee also seeks recovery of her attorney's fees. The Summons was issued on the same date. The Certificate of Service filed by Trustee indicates that on June 13, 2006, a copy of the Complaint and the Summons were sent by regular, first class mail to "Wendy Rollison, Bankruptcy Department, 5202 Presidents Court, Del-0836, Frederick, MD 21703." The Summons required an Answer to be filed within thirty (30) days of its issuance on June 6, 2006. No Answer or other responsive pleading was filed and on November 2, 2006, the Trustee requested that the

Clerk enter a default which was done on that same date. On January 2, 2007, Trustee filed the Motion for Default Judgment which is now before the Court.

Trustee's Motion will be **denied** because Trustee failed to serve the Complaint in the proper manner and, indeed, appears to have named as Defendant a non-existent corporation. The transaction which comprises the subject matter of the lawsuit is payments made by the Debtor pre-petition with respect to a Chase Platinum VISA card ending in -7707. See Debtor's Statement of Financial Affairs, Question 3a which shows payments to Chase VISA of \$5,580 within the ninety days prior to the filing of this Chapter 7 case. (Docket No. 1, Case No. 04-41487).¹ This is approximately the same amount discussed by the Trustee in the Complaint (\$5,135.54). This is also the same amount (\$5,135.54) which is detailed in the Trustee's Motion to Approve Compromise and Settle Claim with "Chase Platinum VISA" which was filed on August 9, 2005. (Docket No. 9, Case No. 04-41487). The Court entered an unopposed Order approving that settlement on September 14, 2005. (Docket No. 17) The failure of "Chase Platinum VISA" to pay the settlement amount forms the basis of Count 2 of Trustee's Complaint against "Chase Card Services, Inc."

To add to the confusion, the distribution list submitted by the Trustee with respect to the Order Approving the Settlement (Docket No. 9, Case No. 04-41487) was addressed to Wendy Rollison at "Chase Card Services, N.A." Finally, a Proof of Claim was filed in the case with respect to the VISA account at issue. It was submitted by Richard Ralston, an attorney, and

¹Debtor scheduled an unsecured claim by Chase Platinum VISA (account no. -7707) in the amount of \$8,645, which is the same amount that Debtor reported in response to Statement of Financial Affairs, Question 3a. as still owing after his payments of \$5,580.

references account -7707 and names the creditor as “Chase Bank USA, N.A.” (Claim No. 3).²

Relevant filings with the Securities and Exchange Commission reveal that Chase Bank USA, N.A. is a subsidiary of JP Morgan Chase & Co. and is a national banking institution regulated by the Comptroller of Currency. There is no record of Chase Card Services, Inc. or Chase Card Services, N.A. Chase Card Services seems to be a d/b/a used by Chase Bank USA, N.A. to transact business with respect to its numerous brands of consumer credit cards, including Chase Platinum VISA. It would thus appear from the filings in this case that the proper defendant would be “Chase Bank USA, N.A. d/b/a Chase Card Services d/b/a Chase Platinum VISA.”

Service of an Adversary Proceeding must be sufficient under Rule 4 of the Federal Rules of Bankruptcy Procedure, made applicable in bankruptcy cases by Rule 7004 of the Federal Rules of Bankruptcy Procedure. Proper service under Rule 7004 is necessary to establish personal jurisdiction over a defendant corporation or association. *Precision Etchings and Findings, Inc. v. LGP Gem Ltd.*, 953 F.2d 21, 23 (1st Cir. 1992). Failure to comply with the service requirements of Rule 7004 will render service of process insufficient, and will deprive the bankruptcy court of the authority to issue an order or judgment in the matter. *In re Santos Rivera (Santos Rivera v. Cooperativa De Ahorro)*, 2006 WL 3909923 (Bankr. D. Puerto Rico 2006).

Chase Bank USA, NA is an Insured Depository Institution within the meaning of section 3 of the Federal Deposit Insurance Act. As such, service on Chase Bank USA, N.A. must be made in accordance with Bankruptcy Rule 7004(h) which ordinarily requires service be made by certified


²It is interesting to note that the Claim is filed in the amount of \$396.33, not the \$8,645 listed by Debtor with respect to the same account number.

mail addressed to an officer of the institution.³ See *In re Hamlett (Hamlett v. Amsouth Bank)*, 322 F.3d 343, 346 (4th Cir. 2003). The Certificate of Service does not reflect either service by certified mail or service on an officer of the bank and is thus inadequate.

Even if “Chase Card Services, Inc.” were the correct defendant with respect to the claim under Sections 547 and 550, service was not properly effected on that Defendant. Service upon a corporation must be effected under Rule 7004(b)(3) which requires “mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. . .” Here the Certificate of Service filed by Trustee shows service on an individual, Wendy Rollison, but does not even include the name of a corporation, let alone whether Ms. Rollison is an officer, managing or general agent, or is otherwise authorized to receive service on behalf of the named Defendant.

Trustee’s Motion for Default Judgment is **DENIED** and the Clerk’s Entry of Default is **VACATED**. The Trustee shall have twenty (20) days to amend the Complaint and/or to obtain issuance of a new Summons.

SO ORDERED this 5th day of February, 2007.


Mary Grace Diehl
United States Bankruptcy Judge

³Rule 7004(h) excuses such service if (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service. None of these exceptions apply based upon the record now before the Court.